



# MONTANA DEPARTMENT OF CORRECTIONS

## ADULT SECURE CARE FACILITIES

### POLICY AND PROCEDURES

Policy No.: DOC 3.3.2	Subject: <b>OFFENDER LEGAL ACTIVITIES IN ADULT SECURE FACILITIES</b>
Chapter 3: FACILITY/PROGRAM OPERATIONS	Page 1 of 3 and Attachment
Section 3: Offender Privileges in Secure Facilities	Revision Date: 08/27/01; 11/26/01; 06/26/02; 10/18/05
Signature: /s/ Bill Slaughter, Director	Effective Date: Oct. 1, 1997

#### **I. POLICY:**

It is the policy of the Department of Corrections to assist incarcerated offenders who desire to access the courts.

#### **II. APPLICABILITY:**

Department and contracted Adult Secure Care Facilities.

#### **III. AUTHORITY:**

2-15-112, MCA	<i>Duties and Powers of Department Heads</i>
37-61-201, MCA	<i>Who Considered to be Practicing Law</i>
37-61-210, MCA	<i>Penalty for Practicing Law Without License</i>
37-61-418, MCA	<i>Attorney May see Prisoner</i>
4-4274, -4275, -4276, ACA	<i>Standards for Adult Correctional Institutions, 4<sup>th</sup> Edition</i>
MSP Policy 3.4.1	<i>Inmate Discipline</i>
DOC Policy 3.1.5	<i>Entrance Procedures and Detainment of Non-offenders</i>
DOC Policy 4.1.3	<i>Offender Personal Property</i>
DOC Policy 4.1.4	<i>Indigent Status</i>
DOC Policy 5.4.1	<i>Offender Correspondence</i>

#### **IV. DEFINITIONS:**

Facility Administrator – The official, regardless of local title (administrator, warden, superintendent), ultimately responsible for the facility or program operation and management.

Offender Library Work (OLW) – An offender assigned to work in a facility library in the Offender Legal Assistance Program to perform the duties outlined in the OLW job description.

Pro se – The offender represents himself or herself in court without an attorney.

#### **V. PROCEDURES:**

##### **A. Offender Legal Access**

1. Each Adult Secure Care Facility will:

- a) ensure that offenders are provided with meaningful access to the courts;
- b) provide a minimum of one computer with electronic legal research capabilities;
- c) provide forms that the offender may utilize to get his or her petition into court;

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- d) provide reasonable accommodations to offenders with disabilities or offenders in locked housing units who, because of their disability or security status, cannot utilize the services provided; and
- e) allow offenders to correspond with licensed attorneys in accordance with *DOC Policy 5.4.1, Offender Correspondence*.

#### **B. Attorney Access to Offenders**

1. Each facility will have procedures that allow for attorney access to offenders in accordance with *DOC Policy 3.1.5, Entrance Procedures and Detainment of Non-offenders*.
2. Each facility, upon reasonable notice, will allow a practicing attorney to see and consult alone and in private with any offender who desires an attorney consultation.

#### **C. Offender Legal Materials and Assistance**

1. Each facility will provide, at a minimum, the following legal materials to offenders:
  - the Montana Code Annotated
  - the published decisions of the Montana Supreme Court
  - the decisions of the Montana federal district court
  - the decisions of the Ninth Circuit Court of Appeals
  - the decisions of the United States Supreme Court
  - the United States Code, Titles 28 and 42
  - federal and state rules of court
2. Each facility will have the following forms available to provide to offenders who request them:
  - notice of appeal
  - motion to withdraw guilty plea
  - petition for post conviction relief, memorandum and affidavit
  - petition for habeas corpus relief
  - petition for DNA testing
  - form 28 U.S.C. 2254
  - federal complaint
  - in forma pauperis form
  - petition for executive clemency
  - application for sentence review
3. Each facility administrator will designate a staff member to oversee offender access to legal materials and to assist offenders to access the appropriate forms and perform legal research. The designated staff member may designate one or more offender library workers to assist in the provision of legal access for other offenders. If the facility employs offender library workers, the OLWs may help disabled offenders and perform other duties to assist the Offender Legal Assistance Program in accordance with the Department's job description for OLWs (see attachment).

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4. At the discretion of the facility administrator, the facility may provide a copy machine for offenders to make photocopies for litigation.
  - a) the facility may establish the cost for copies, which may include an administrative fee, but may not exceed \$.25 per page; and
  - b) the cost of the copies will be deducted from the offender's account.
5. Upon request, a designated staff member will provide copies to indigent offenders when there is a demonstrated need for such copies.
6. An offender may retain only his or her own personal legal papers in accordance with *DOC Policy 4.1.3, Offender Personal Property*.

#### **D. Unauthorized Practice of Law**

1. Except as provided in Section E (2) below, any offender who does legal work or writes a legal document for another offender is practicing law and is doing so illegally if the offender is not licensed to practice law.
2. The unauthorized practice of law is a disciplinary violation pursuant to *MSP Policy 3.4.1, Inmate Discipline*. The Department may discipline any confined offender who does legal work or writes legal documents for another offender.

#### **E. Other Legal Issues**

1. Each facility will provide assistance to illiterate, disabled and non-English speaking offenders who wish to file a form identified in Section C, above. Each facility administrator will designate a staff member to assist these offenders in obtaining the required legal materials.
2. Each facility will offer notary service to offenders not to exceed \$1.00 per notarized document. The notary will deposit fees for notarizations in the Inmate Welfare Account.
3. Offenders who are unable to pay for postage or notary services in reasonable quantities may request these services pursuant to *DOC Policy 4.1.4, Indigent Status*.

#### **F. Prohibition on Retaliation**

1. Facility or program staff will not retaliate against or penalize any offender who chooses to access the courts.

### **VI. CLOSING:**

Questions concerning this policy should be directed to the Department's Legal Services Bureau.

#### **Attachment**

Offender Library Worker Job Description

**OFFENDER LIBRARY WORKER**  
***JOB DESCRIPTION***

Job Title: Offender Library Worker

Program: Offender Legal Assistance Program

Location: \_\_\_\_\_

Immediate Supervisor: \_\_\_\_\_

Additional Supervisor(s): \_\_\_\_\_

**DESCRIPTION:**

The Offender Legal Assistance Program is designed to ensure that offenders have meaningful access to the courts. The program is administered by the Department of Corrections through a staff attorney who works in conjunction with designated staff at each facility. Facility staff oversees the day-to-day operation of the program, including computer usage, printing, and the receiving and logging of the Requests for Legal Forms or Legal Research. The attorney monitors the program to ensure compliance with state and federal standards, and is available to assist staff with issues relative to the program's operation.

The offender library worker (OLW) in the Offender Legal Assistance Program works under the direct supervision of designated staff, as well as the DOC staff attorney. OLW assistance must occur in the library during library hours, under supervision. The OLW has no authority to conduct legal research, answer requests for legal information, or assist other offenders in the absence of direction from designated staff or the DOC attorney. Under the direction of designated staff or the DOC attorney, the OLW is responsible for responding to written Requests for Legal Forms or Legal Research, performing requested research, copying cases or statutes, providing legal forms, maintaining records or logs, and other duties as assigned. OLWs in the Offender Legal Assistance Program are subject to immediate discharge by the designated supervisor or the DOC staff attorney if acting outside the scope of his or her duties as defined in this job description.

**JOB DUTIES:**

1. Respond to Requests for Legal Forms or Legal Research at the direction of the immediate supervisor.

Offenders request assistance by filling out the Request for Legal Forms or Legal Research provided by the Department of Corrections. All requests are received by designated staff, who may respond to the request or forward it to the OLW for response. The OLW may not receive requests directly from offenders. The OLW must respond to the request in a timely, concise fashion, and record the date and his or her response on the back. If the OLW needs additional information to respond, he or she may consult the DOC staff attorney or facility staff. The original request is returned to the offender, and a copy is kept for library records.

2. Under direction and supervision of library staff, assist illiterate or impaired offenders in preparing forms. OLWs may help offenders complete legal forms only under the direction of designated staff or the DOC attorney. Designated staff or the DOC attorney will determine whether an offender is sufficiently impaired to warrant assistance. Assistance must occur in the library during library hours, under supervision. The offender must sign his or her own legal papers. The OLW must complete the back side of a request form showing that assistance was provided.
3. Maintain log for legal research computer. The OLW must maintain a log of all legal computer research, which includes date, time, and offender's name. OLWs must immediately report improper use of the computer to staff.
4. Instruct other offenders about how to use Lexis-Nexis. Offenders who want to conduct their own research on Lexis-Nexis may receive instruction from the OLW about how to effectively use the search functions.

#### PROHIBITED ACTIVITIES:

1. OLWs may not be in possession of another offenders' legal papers.
2. OLWs may not help other offenders complete forms unless instructed to do so by designated staff or the DOC attorney.
3. OLWs may not draft legal forms for use by offenders.
4. OLWs may not receive payment from other offenders for their services.

#### QUALIFICATIONS:

Candidates must:

- be able to read and write proficiently
- have basic knowledge of the criminal justice system, including direct appeal process, postconviction relief, habeas corpus relief, and federal habeas corpus relief
- have proficient typing skills and be knowledgeable in the use of Lexis-Nexis or other legal research software and basic legal research techniques
- have a basic understanding of the legal forms utilized in the program
- be organized, conscientious, and demonstrate attention to detail
- be aware of privacy concerns relative to legal information, and security issues associated with operation of the Offender Legal Assistance Program